

**IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [CUSTOMS]
ORIGINAL SIDE**

BEFORE:

**THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
AND
THE HON'BLE JUSTICE UDAY KUMAR**

**CUSTA 88 OF 2025
IA NO: GA 1 OF 2025**

**COMMISSIONER OF CUSTOMS PORT
VS
M/S GREENPANEL INDUSTRIES LIMITED
(FORMERLY M/S GREENPLY INDUSTRIES LTD)**

**CUSTA 21 OF 2025
IA NO: GA 2 OF 2026**

**COMMISSIONER OF CUSTOMS AIRPORT AND AIR CARGO
VS
SHRI SANJAY AGARWAL**

**CUSTA 22 OF 2025
IA NO: GA 2 OF 2026**

**COMMISSIONER OF CUSTOMS AIRPORT AND AIR CARGO
VS
SHRI PREET KUMAR AGARWAL**

**CUSTA 25 OF 2025
IA NO: GA 2 OF 2026
IA NO: GA 3 OF 2026**

**COMMISSIONER OF CUSTOMS (AIRPORT AND AIR CARGO)
VS
SHRI DHRUVJYOTI ROY AND ORS.**

For the Appellant : *Mr. Vipul Kundalia, Ld. Sr. Adv.*
(CUSTA 88 of 2025) *Mr. Anurag Roy, Ld. Adv.*

For the Respondent : *Mr. Rahul Tangri, Ld. Adv.*
(CUSTA 88 of 2025) *Ms. Taniya Roy, Ld. Adv.*

For the Appellants : *Mr. Tapan Bhanja, Ld. Adv.*
(CUSTA 21 of 2025
CUSTA 22 of 2025 &
CUSTA 25 of 2025)

For the Respondents : *Mr. Arnab Chakraborty, Ld. Adv.*
(CUSTA 21 of 2025 *Mr. Aniket Chaudhury, Ld. Adv.*
CUSTA 22 of 2025 & *Ms. Shreya Mundhra, Ld. Adv.*
CUSTA 25 of 2025)

Reserved on : *05.05.2026*

Pronounced on : *10.07.2026*

Uday Kumar, J:-

1. The present batch of statutory appeals has been preferred by the Revenue under Section 130 of the Customs Act, 1962, assailing the various final orders passed by the Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Eastern Zonal Bench, Kolkata. As these matters are listed before us for formal admission, we are tasked with the preliminary evaluation of whether the memorandums of appeal disclose any substantial question of law warranting this Court's intervention. Before we could embark upon this judicial exercise, the proceedings were interrupted by the appearance of the Respondents, who raised a

significant procedural hurdle regarding the maintainability of these appeals.

2. At the very threshold of the admission hearing, learned Senior Counsel appearing for the respective Respondents sought an audience, contending that this Court is duty-bound to hear them on the issue of subject-matter jurisdiction, specifically concerning the "rate of duty" under Section 130E, before any formal order of admission is passed. The Respondents' objection is grounded on the premise that if the appeals are inherently defective or outside the Court's jurisdiction, a preliminary hearing would prevent a futile and time-consuming trial. To support this contention, they have invoked Rule VI, Part XX, Chapter XXXVIII of the High Court at Calcutta (Original Side) Rules, 1914, asserting it confers upon this Bench the discretionary power to hear a respondent at the admission stage. They argue that this rule is a salutary power intended to ensure that the Court does not exercise jurisdiction where none exists. Furthermore, by drawing a parallel between the appellate framework of the Customs Act laid down under Section 130 and the civil appellate procedure under Section 100 of the Code of Civil Procedure (CPC), they urged that an appellate court has an inherent duty to permit a respondent to demonstrate, at the inception, that no substantial question of law exists. The Court should borrow the procedural fairness inherent in civil appellate law.
3. In support of this prayer, the Respondents have placed reliance on the principles articulated in *Asma Lateef v. Shabbir Ahmad* (2024) 4 SCC

696, *Nusli Neville Wadia v. Ivory Properties* (2020) 6 SCC 557, and *Commissioner of Customs v. Motorola India Ltd.* (2019) 9 SCC 563, arguing that jurisdictional challenges based on the applicability of an exemption notification (Notification No. 104/2009-Cus), directly relates to the "rate of duty" under Section 130E, must be addressed at the earliest possible stage to ensure judicial economy. They contend that the Court should not proceed with an *ex-parte* admission process when a fundamental defect in the maintainability of the appeal has been brought to its notice. When a challenge strikes at the very "root" of the matter, such as the applicability of a duty exemption or a dispute over the "rate of duty" under Section 130E, it is a judicial imperative to resolve it immediately.

4. Further relying on *Subrato Biswas v. Nahid Parveen* (MANU/MP/0463/2025) and *K.K. Kannan v. Koolivathukkal Karikkan Mandi* (2010) 2 SCC 239, the respondents submitted that an Appellate Court has a duty to permit a respondent to demonstrate at the threshold that no substantial question of law exists.
5. They have also pointed to Section 83 of the Finance Act, 1994, to argue for an integrated approach to procedural applications, suggesting that the rigid "gatekeeping" exercise advocated by the Revenue is a departure from the broader principles of natural justice and fair play. They posit that the Court should adopt a holistic approach, ensuring that tax litigation is not reduced to a one-sided inquisitorial exercise when a

respondent is present and ready to point out a patent lack of jurisdiction.

6. In sharp contrast, the Learned Counsel for the Appellant-Revenue maintained that the statutory scheme of the Customs Act is a self-contained code that strictly precludes such preliminary interventions. They submit that the admission stage under Section 130 is an exclusively inquisitorial "gatekeeping" exercise, where the Court acts as a sentinel to determine if a "substantial question of law" exists based solely on the memorandum of appeal. Any participation by the Respondent at this stage is, therefore, legally alien to the Act.
7. Learned Counsel relies heavily on the Supreme Court's interpretation in *R. Nagaraj (Dead) through LRs v. Rajmani & Ors.*, (2025 SCC OnLine SC 762), arguing that the legislature intentionally crafted a two-step process, an *ex-parte* admission followed by a fully contested final hearing under Section 130(5). They submit that allowing the Respondent to intervene now would "invert this sequence" and turn a summary screening process into a full-blown trial and final hearing.
8. Furthermore, the Revenue pointed out that no formal caveats under Section 148A of the CPC have been filed by respondents, nor are there any delay-related issues that might otherwise trigger a necessity for notice. In the absence of these, the Revenue asserts that the Respondents have no *locus standi* to appear.
9. Finally, they remind us of our own decision in *OCOT 06 of 2025*, asserting that the rule of judicial discipline and the principle of *stare*

decisis, adherence to the said legal doctrine require us to consistently reject the intervention and proceed with the admission hearing in the absence of the respondent as the issue has already been judicially determined in favor of the *ex-parte* nature of the admission process.

10. The facts remain that these appeals are currently at the pre-admission stage, where the Court, in its inquisitorial capacity, must satisfy itself as to whether a substantial question of law arises. The Revenue, on the other hand, contends that the statutory architecture of Section 130 is a self-contained code which, by its very design, requires the admission process to be conducted in the absence of the respondent.

11. We, therefore, called upon to determine a foundational procedural issue:

“whether, in a Customs Appeal filed under Section 130 of the Act, a Respondent possesses the locus standi to be heard on the maintainability of the appeal at the pre-admission stage or whether such a right be statutorily deferred until the final hearing?”

12. In addressing the core of this dispute, we must first recognize that the Customs Act, 1962, is not merely a collection of sections but a meticulously crafted procedural ladder. The legislature, in its wisdom, has designed Section 130 to be a specialized appellate path. When we look at the sequence mandated by the Act, it becomes evident that the admission stage is intended to be a swift, preliminary filter. The Court’s primary duty at this juncture is to examine the memorandum of appeal and determine if, on the face of it, a "substantial question of law" exists. This is not the moment for a trial on the merits; it is a moment for the Court to exercise its judicial mind in an inquisitorial capacity to ensure

that only appeals raising significant legal questions reach the final hearing stage.

13. The Respondents' reliance on Rule VI, Part XX, Chapter XXXVIII of the High Court at Calcutta (Original Side) Rules, 1914, while persistent, does not override the primary legislation. It is a fundamental principle of jurisprudence that while internal court rules provide the mechanism for the administration of justice, they cannot be used to circumvent the express statutory sequence enacted by Parliament. We have examined the discretionary power mentioned in the Rule VI, and we find that it is intended to handle objective, non-merit-based defects, such as matters of limitation or technical filings. It was never intended to be a vehicle for a "mini-trial" where complex jurisdictional questions, which often involve mixed questions of fact and law, are debated before the appeal is even admitted. To allow such a practice would be to convert a threshold screening into a protracted hearing, thereby clogging the judicial pipeline and frustrating the very efficiency the Act seeks to preserve.

14. Furthermore, we must address the Respondents' attempt to equate this stage with the jurisdictional inquiries discussed in *Asma Lateef v. Shabbir Ahmad* (*supra*) and *Nusli Neville Wadia v. Ivory Properties* (*supra*). Having reviewed these judgments, we find they are contextually distinct. Those cases dealt with the inherent power of Civil Courts under Section 9 of the CPC to determine their own jurisdiction. In contrast, the High Court's role under Section 130 of the Customs Act is that of an appellate authority operating within a limited statutory framework. We

find the reasoning of the Hon'ble Supreme Court in *R. Nagaraj (Dead) through LRs v. Rajmani & Ors.* (*supra*) to be the guiding light here. The Apex Court has explicitly underscored why the respondent is not a necessary participant at this stage:

"The reason for giving this right to the respondent for raising such objection at the time of hearing is because the High Court frames the question at the stage of admission, which is prior to issuance of notice of appeal to the respondent. In other words, the question is framed ex parte and, therefore, sub-section (5) enables him to raise such objection at the time of hearing..."

15. This observation confirms that the statutory scheme intentionally segregates the "Admission" phase from the "Final Hearing" phase. The Respondent's right to challenge the maintainability, the jurisdiction, or the "rate of duty" notification is not lost; it is merely deferred to the post-admission hearing under Section 130(5). By appearing at the final stage of hearing, the Respondent can fully argue that the substantial questions of law framed by the Court do not actually arise or are barred by law. This sequence ensures that the Court is not unnecessarily distracted by protracted arguments before it has even satisfied itself that the appeal is worth hearing.

16. Consistency is the bedrock of judicial practice. As we previously held in *OCOT 06 of 2025*, the sanctity of this two-stage process must be maintained. To allow the Respondents to intervene now, when no formal caveats have been filed and the matter is within time, would be to destabilize the appellate architecture envisioned by the legislature. The

procedural integrity of Section 130 must be honoured, and we are not persuaded that the current circumstances warrant a departure from this established sequence. Therefore, the Respondents' presence at this bar for the purpose of challenging maintainability is premature, and we must proceed with the screening process as mandated by the Act.

17. Consequently, we reject the preliminary prayer of the Respondents to be heard at this admission stage.

18. The Respondents are directed to withdraw from the Bar.

19. We shall now proceed to hear the learned Counsel for the Appellant *ex-parte* on the question of admission and the prayers for ad-interim relief.

20. Let the appeal be listed on **21st July, 2026** under the heading **“To Be Mentioned”**.

I AGREE

(RAJARSHI BHARADWAJ, J.)

(UDAY KUMAR, J.)